



## State Efforts to ‘Reclaim’ Our Public Lands

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Despite the many problems that states and municipalities face today—from budget shortfalls to unemployment—seven western states have decided to embark on unconstitutional and quixotic battles attempting to force the federal government to turn millions of acres of public lands over to the states. Doing so, however, would result in the eventual exploitation for private profits of these beautiful parks, refuges, forests, and other lands because the leaders driving such efforts would prefer to see quick economic gains from resource extraction rather than prioritizing these areas’ more sustainable economic uses such as recreation.

Rather than being managed so that all Americans can enjoy them, turning our public lands over to states would result in their management on the whims of governors and state legislatures, who in the West are often quite conservative and tend to ideologically favor limited regulation and private profits. According to one state lands commissioner, these bills would be “catastrophic” to the public lands that Americans know and love.<sup>1</sup>

Clashes between states and the federal government over their respective authorities have long been a regular feature of our politics, especially when it comes to issues regarding control over federal public lands in the West. More than 700 million acres of federal public lands, including national parks, national forests, and national monuments, belong to all Americans, and are tremendous economic generators—the Department of the Interior stimulated \$385 billion in economic development and more than 2 million jobs in 2011 alone.<sup>2</sup> At times, conflicts over ownership of the federally managed parks, forests, refuges, and other properties have grown into a regional cause in the West, as they did during the “Sagebrush Rebellion,” a political movement demanding the turnover of federal lands to the states that arose in the 1970s but eventually fizzled out in the late 1980s.

We are now seeing yet another iteration of that hardy but misguided western impulse. These state legislative efforts are nothing more than corporate-backed messaging tools that can be traced to conservative front groups such as the American Legislative Exchange Council, or ALEC, and Americans for Prosperity, as we discuss further below. The proposals run directly contrary to abundant evidence that Americans and westerners support federal management of their public lands and value the economic benefits those lands provide, especially when they are protected from mining and drilling and are used instead for recreation and other more sustainable purposes.

In the past year, legislatures in seven western states—Utah, Arizona, Wyoming, New Mexico, Colorado, Nevada, and Idaho—have passed, introduced, or explored legislation demanding that the federal government turn over millions of acres of federal public lands to the states. If successful, these bills could be disastrous: Rather than being managed for the benefit and use of the American public, these lands will instead be managed in whatever way each state wants to use them—which generally means maximizing private profits through mining, drilling, and other resource extraction.

These lawmakers are waging a losing battle that amounts to little more than political grandstanding to rally their extreme conservative base and feed an antigovernment narrative. Such bills contradict the majority of public opinion in these states, as well as economic realities and constitutional precedent dating back to the mid-19th century.

ALEC and Americans for Prosperity have been fanning the fire under these efforts to “reclaim” federal public lands. ALEC is a conservative corporate front group funded by fossil-fuel interests such as the Koch brothers and ExxonMobil that develops model legislation for state legislators to introduce in their legislatures,<sup>3</sup> and it has endorsed many of the bills turning public lands over to the states. As the Associated Press reported, “Lawmakers in Utah and Arizona have said the legislation is endorsed by the American Legislative Exchange Council, a group that advocates conservative ideals, and they expect it to eventually be introduced in other Western states.”<sup>4</sup>

That should come as little surprise, considering that one of ALEC’s “model bills”—those that it drafts and develops to shop to various state legislators—is the “Sagebrush Rebellion Act,” which was “designed to establish a mechanism for the transfer of ownership of” non-state lands “from the federal government to the states.”<sup>5</sup>

Further evidence that ALEC is the puppet master behind these performances: Utah State Rep. Ken Ivory (R), who is leading the charge for states to “take back” public lands through his “American Lands Council,” has been presenting the idea of turning federal land over to the states at ALEC conferences such as the one in Salt Lake City last summer.<sup>6</sup> Additionally, Rep. Ivory has been promoting this idea to various state legislatures—he spoke, for example, with Wyoming’s Joint Minerals, Business and Economic Development Interim Committee in October 2012.<sup>7</sup>

Proponents of these bills claim that the states do not receive tax revenue from federal lands and argue that the proceeds from turning the land over to the states to then be further developed can help fund essential state services such as education.<sup>8</sup> They also argue that the federal government promised to turn public lands over to the states at the establishment of their statehoods more than 100 years ago.

This issue brief provides an overview of each state’s attempt to force the turnover of public lands, and then describes why this is not only bad policy that is not in accordance

with what westerners actually believe, but is also unconstitutional based on numerous Supreme Court decisions.

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## State efforts to 'reclaim' public lands

In this section, we provide an overview of each of the bills in seven western states and detail where they are in the legislative process.

### Utah

The Outdoor Industry Association, the trade organization for outdoor recreation companies, notes that the outdoor economy—in part based on protected public lands—stimulates \$12 billion in consumer spending and more than 122,000 jobs for Utah every year.<sup>9</sup> This extraordinary economic resource will be threatened if the state succeeds in its attempt to take over public lands and instead use them for resource extraction.

Despite this, Utah has been leading the charge when it comes to state attempts to reclaim public lands. Rep. Ivory sponsored the Transfer of Public Lands Act and Related Study,<sup>10</sup> a bill that passed both the state House and Senate and was signed into law by Gov. Gary Herbert (R) in March 2012.<sup>11</sup> The bill established a deadline of December 31, 2014, for the federal government to turn over Utah's nearly 20 million acres of public lands to the state, or it will sue.<sup>12</sup>

Utah's Office of Legislative Research and General Counsel noted that the case law with regard to public lands going back to the 1870s gives the bill "a high probability of being declared unconstitutional."<sup>13</sup> And the *Salt Lake Tribune* has called Utah's effort "tilting at windmills."<sup>14</sup>

Despite this, the Utah state legislature has already appropriated nearly \$3 million to cover expected state legal expenses and has set up the Utah Land Commission to oversee the process of returning the lands to the state.<sup>15</sup>

While the bill exempts Native American lands, national parks, and military installations, it still could have a major impact on some of Utah's most special places. One Utah publication, for example, notes that "While [Ivory] doesn't say this will happen, it is possible that the huge coal fields now off limits because of the Grand Staircase Escalante National Monument in southern Utah could be developed by the new state land commission."<sup>16</sup>

## Arizona

The outdoor recreation economy in Arizona creates \$10.6 billion in consumer spending and supports nearly 104,000 jobs in the state.<sup>17</sup> Yet State Sen. Al Melvin (R) introduced<sup>18</sup> S.B. 1332<sup>19</sup> in the spring of 2012 requiring Congress to turn over 25 million acres of public lands to the state by the end of 2014, or it would sue.<sup>20</sup> Similar to the legislation in Utah, the Arizona bill would have exempted Indian reservations, national parks, and military lands.

Arizona Gov. Jan Brewer (R), however, vetoed the bill in May 2012, surprising many observers due to her conservative background. She justified her veto by saying she was “concerned about the lack of certainty this legislation could create for individuals holding existing leases on federal lands. Given the difficult economic times, I do not believe this is the time to add to that uncertainty.”<sup>21</sup>

Arizona voters also took to the polls to fight against a ballot initiative that similarly would have turned public lands over to the state.<sup>22</sup> Proposition 120, supported by state Republican legislators, would have amended the state’s constitution to “declare Arizona’s sovereignty and jurisdiction over the ‘air, water, public lands, minerals, wildlife and other natural resources within the state’s boundaries.’”<sup>23</sup> This measure would have included turning the Grand Canyon over to the state,<sup>24</sup> but the ballot measure was defeated 68 percent to 32 percent.<sup>25</sup>

## Wyoming

Although the Outdoor Industry Association released data noting that the outdoor economy creates \$4.5 billion in consumer spending and 50,000 direct jobs in Wyoming,<sup>26</sup> State Rep. David Miller (R) introduced a bill in early February 2013 demanding state ownership of public lands. The bill—H.B. 0228, known as the Transfer of Federal Lands Study—would require the state attorney general to study “possible legal recourses available to compel the federal government to relinquish ownership and management of specified federal lands in Wyoming,” and would establish a task force focused on the land transfer.<sup>27</sup> The bill passed both houses of the state legislature earlier this year and now awaits the governor’s signature.<sup>28</sup>

Rep. Miller is also the CEO of a uranium mining company and told WyoFile, a local news outlet, that he got the idea for his bill in Wyoming from Utah Rep. Ivory’s presentation at last summer’s ALEC conference in Salt Lake City.<sup>29</sup>

Notably, however, the Wyoming attorney general’s office wrote an opinion stating that Utah’s federal land transfer laws relied on “a repeatedly rejected reading of the United States Constitution and a strained interpretation of Utah’s statehood act.”<sup>30</sup>

## New Mexico

The state of New Mexico sees \$6.1 billion in consumer spending stimulated by the outdoor recreation industry, as well as more than 68,000 jobs every year.<sup>31</sup> Nevertheless, New Mexico State Rep. Yvette Herrell (R) and State Sen. Richard Martinez (D) introduced<sup>32</sup> the Transfer of Public Land Act<sup>33</sup> in early 2013, calling on the federal government to turn 23 million acres of New Mexico's public lands over to the state by the end of 2015.<sup>34</sup> It also would create a public lands transfer task force to study the process of taking ownership of these federal lands.

Jumping into this fray is the Koch-backed conservative group Americans for Prosperity, which called the bill “an exciting change” and urged its members to call the state legislature to express support.<sup>35</sup> On the other hand, the state's lands commissioner stated that the bill would be “catastrophic,”<sup>36</sup> and noted that a fiscal impact analysis shows that if public lands were transferred to the state, the office would “need 2,000 more employees and an additional \$218 million to administer the land at the same level as the federal government.”<sup>37</sup>

The bill is currently in the legislative process, and it is unclear what New Mexico Gov. Susana Martinez's (R) position is on it.

## Colorado

Colorado is a hotspot for the outdoor recreation economy, which stimulates \$13.2 billion in consumer spending and nearly 125,000 direct jobs to the state.<sup>38</sup> But a handful of members in the Colorado state legislature are attempting to revive a failed attempt of last year's legislative session by introducing a bill—known as S.B. 13-142—which would require the federal government to turn over all “agricultural lands” to the state.<sup>39</sup> The law's broad definition of agricultural lands certainly includes the more than 14 million acres of national forests in the state and likely includes its Bureau of Land Management lands.

State Rep. Jerry Sonnenberg (R) and State Sen. Scott Renfroe (R) introduced the bill in late January 2013, requiring the federal government to turn these lands over to the state by December 31, 2014. The bill, however, failed in committee in early February.<sup>40</sup>

A similar bill failed in last year's legislative session after much criticism from public and statewide opinion leaders. As a *Denver Post* columnist put it at the time, “We are all hoping this goes away very quickly.”<sup>41</sup>

## Nevada

Nevada sees \$14.9 billion created by the outdoor recreation industry every year, as well as 148,000 direct jobs.<sup>42</sup> And yet Nevada Assemblyman John Ellison (R) and State Sen. Pete Goicoechea (R) are drafting a bill for the 2013 legislative session that would create a committee “to help broker the transfer of federal land to the state,” according to the *Elko Daily Free Press*.<sup>43</sup> Legislation is still being drafted as of late February.<sup>44</sup>

Specifically modeled after the Utah bill, the Nevada bill would create a Nevada Land Management Implementation Committee appointed by county commissioners, which would conduct a study anticipating the effects that a land transfer would have on the state “in contemplation of Congress turning over the management and control of those public lands to the State of Nevada on or before June 30, 2015.”<sup>45</sup>

## Idaho

The outdoor recreation economy creates \$6.3 billion in consumer spending in Idaho per year, as well as 77,000 direct jobs.<sup>46</sup> While the Idaho legislature has not yet officially considered a bill to turn some or all of the state’s 33 million acres of public lands over to the state, discussions and preparations to do so are in the works.<sup>47</sup> State Rep. Lawrence Denney (R), chairman of the state’s Resources and Conservation Committee, has expressed interest in introducing such a bill.<sup>48</sup> Utah Rep. Ivory addressed a joint meeting of the state’s House Resources and Conservation Committee and Senate Resources and Environment Committee in late January 2013, lauding the Utah bill and its merits.<sup>49</sup>

The idea of selling off public lands has not, however, seen political success in Idaho. The Associated Press reports that in the state’s 2006 gubernatorial race, now-Gov. Butch Otter (R) was forced to withdraw his support for federal legislation that would sell off public lands in the West to offset costs of Hurricane Katrina—only after “getting bruised by his political challengers and voters irritated by the possibility of losing some of Idaho’s prized backcountry.”<sup>50</sup>

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## State efforts are seriously misguided

This section outlines the three main reasons why state attempts to “take back” public lands are misguided: People in these states do not believe there is a problem; the economic arguments don’t pan out; and the efforts are unconstitutional.

## People in these states don't think there is a problem

Central to the intent behind and promotion of these bills is the notion that people living in these seven states are upset about the job that the federal government is doing when it comes to managing public lands, and that there is too much public land preventing resource development. But conservative ideologues are wrong in this regard, which is indicated in the data below.

A recent poll from Colorado College's State of the Rockies Project, for example, asked western voters whether they think having "too much public land" is a problem.<sup>51</sup> Here are the answers—either that it is a "serious" problem or that it isn't a problem—by state:

**TABLE 1**  
**How western voters feel about having "too much public land"**

State	Total respondents to the poll	
	Serious problem	Not a problem
Arizona	32%	59%
Colorado	27%	68%
New Mexico	32%	60%
Utah	34%	62%
Wyoming	24%	73%

Source: Colorado College State of the Rockies project.

While this poll did not cover Idaho and Nevada, recent polls in those states show similar sentiments. A poll in Idaho, for instance, determined that 73 percent of Idahoans agree that "One of the things our federal government does well is protect and preserve our national heritage through the management of forests, national parks and other public lands."<sup>52</sup> And in Nevada, two-thirds of small-business owners believe that allowing private companies to develop public lands "would limit the public's enjoyment of them."<sup>53</sup>

Despite what conservatives want to think, the western public understands that there is a role for the federal government in managing public lands and doesn't want to see the land turned over to states or private interests.

## Economic arguments don't pan out

Another key argument that proponents of such bills make is that the federal government is "locking up" public lands that could be used for economic development such as mining and drilling. To make this argument more appealing, some of the bills transfer a portion of the funds from selling or developing lands to state public education funds and send the rest to relieve the national debt. As Utah Rep. Ivory put it, "If we unleash those resources in a responsible, sustainable manner, that's a matter of national employment. That's a matter of national economic GDP growth; that's a matter of national deficit and debt reduction."<sup>54</sup>

But conservatives miss two key points in making these economic arguments. First, public lands already provide an extraordinary economic impact, both from traditional resource development currently allowed on the lands such as mining, drilling, and timber, and from outdoor recreation on protected lands. Second, they fail to note that adequately managing millions more acres of land will be very difficult for states facing budget constraints.

Public lands provide tremendous economic impacts. The Department of the Interior—the agency that manages most public lands—stimulated \$385 billion in economic development and more than 2 million jobs in 2011 alone.<sup>55</sup> This number includes the extraction of oil, gas, coal, and other minerals from public lands, in addition to timber, grazing, and recreation. Recreation-related activities alone created 403,000 jobs and nearly \$49 billion in economic activity across the country. The U.S. Forest Service, which manages national forests, also has major economic impacts—visitor spending on recreation in and near national forests, for example, added \$13 billion to gross domestic product and sustained 200,000 jobs across the country in fiscal year 2011.<sup>56</sup>

The fact that public lands create jobs is echoed in public sentiment. In six western states, for example, 79 percent of voters believe that public lands support the economy, while only 15 percent believe they “take land off the tax rolls, cost government to maintain them, and prevent opportunities for logging and oil and gas production that could provide jobs.”<sup>57</sup>

Regarding the second point about states likely not being prepared for the burden of managing an influx of public lands, Jodi Peterson of *High Country News*, a publication based in Paonia, Colorado, says it best:

*If that transfer ever does occur, the old adage “Be careful what you wish for” might apply. Cash-strapped states would have trouble covering even minimal management of former federal land ... [and] there aren’t ready buyers for these millions of acres.*<sup>58</sup>

## The attempts are unconstitutional

Finally, it is important to keep in mind that these attempts are unconstitutional, according to case law dating back to the 1800s, and therefore will only serve to waste state taxpayers’ money. Each of the state attempts to force Congress to turn over public lands references the state’s enabling act—the language that made it a state to begin with. Proponents say the federal government has not kept its promise to give the public lands back to the states.

But in reality this is just not true. Each of these enabling acts that the states agreed to in order to become members of the union renounced their claims to federal public lands. Here are the relevant sections of each state constitution or enabling act:

- **Utah:** “That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof”<sup>59</sup>
- **Arizona:** “That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said boundaries”<sup>60</sup>
- **Wyoming:** “The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof”<sup>61</sup>
- **New Mexico:** “That the people inhabiting said proposed state do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof”<sup>62</sup>
- **Colorado:** “That the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory”<sup>63</sup>
- **Nevada:** “That the people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States”<sup>64</sup>
- **Idaho:** “And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof”<sup>65</sup>

In even further proof that these are attempts are unconstitutional, the U.S. Supreme Court has spoken many times on this issue. Ironically, the case law in this regard was discussed by Utah’s own Office of Legislative Research and General Counsel in its opinion on the Utah bill, stating:

*The Supreme Court of the United States has ruled that “[w]ith respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted to the Union, that such interference with the primary disposal of the soil of the United States shall never be made.” Gibson v. Chouteau, 80 U.S. 92 (1872).*<sup>66</sup>

Additionally, a Congressional Research Service report in 2007 on the history of federal land management and the Constitution noted that:

*The U.S. Constitution addresses the relationship of the federal government to lands. Article IV, § 3, Clause 2—the Property Clause—gives Congress authority over federal property generally, and the Supreme Court has described Congress’s power to legislate under this Clause as “without limitation.” The equal footing doctrine (based on language within Article IV, § 3, Clause 1), and found in state enabling acts, provides new states with equality to the original states in terms of constitutional rights, but has not been used successfully to force the divestment of federal lands. The policy question of whether to acquire more, or to dispose of any or all, federal lands is left to Congress to decide.<sup>67</sup>*

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## Conclusion

Despite the fact that those living in these seven states do not fundamentally agree with the attempts to “take back” public lands, that the economic arguments for it are incomplete, and that the efforts are unconstitutional, conservatives in these state legislatures across the West have still introduced bills demanding the federal government turn federal public lands over to the states. Efforts in Utah, Arizona, Wyoming, New Mexico, Colorado, Nevada, and Idaho are misguided and merely serve to fan the fire of extreme and fruitless rhetoric at the taxpayers’ expense.

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